

***United States Court of Appeals
for the Second Circuit***



EXHIBITS

74-2023

ORIGINAL

B-15

United States Court of Appeals

For the Second Circuit.

SECURITIES & EXCHANGE COMMISSION,
Plaintiff-Appellee,
against

CAPITAL COUNSELLORS, INC., CAPITAL ADVISORS, INC.,
J. IRVING WEISS, ABRAHAM B. WEISS,
Defendants.

CONBOY, HEWITT, O'BRIEN & BOARDMAN,
Appellant,
SYDNEY B. WERTHEIMER,
Receiver-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

EXHIBIT VOLUME.

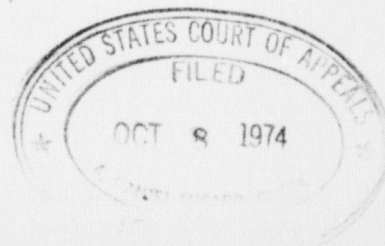
CONBOY, HEWITT, O'BRIEN & BOARDMAN,
Attorneys Pro Se, Appellant,
20 Exchange Place,
New York, N. Y. 10005

WILLIAM D. MORAN,
*Regional Administrator, Securities and Exchange
Commission, Attorney for Plaintiff-Appellee,*
26 Federal Plaza,
New York, N. Y. 10007

LEON LEIGHTON,
Attorney for Receiver-Appellee,
6 East 45th Street,
New York, N. Y. 10017

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 782-6978—1974

(4583)



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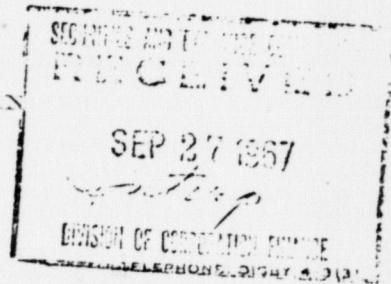
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PLAINTIFF'S EXHIBIT 4.
CONBOY, HEWITT, O'BRIEN & BOARDMAN

20 EXCHANGE PLACE

NEW YORK, N. Y. 10005



CABLE ADDRESS
DIALBOARD, N. Y.

September 25, 1967

George P. Michaely, Esq.
Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
500 North Capital Street, N.W.
Washington, D.C. 20049

RECEIVED

SEP 27 1967



Re: Capital Counsellors

SECURITIES & EXCHANGE
COMMISSION

Dear Mr. Michaely:

As counsel for Mr. J. Irving Weiss and Mr. Abraham B. Weiss, partners in Capital Counsellors, a New York partnership located at 50 Broad Street, New York, N.Y. 10004, our firm has been asked to correspond with you with respect to a recent meeting between yourself, Mr. J. Irving Weiss, Messrs. Singer, Sportin and Weiss of the Commission and Mr. O'Neill of the Federal Home Loan Bank Board on Wednesday, September 20th.

We understand that the purpose of the meeting was to determine whether the Weiss brothers were engaged in the sale of a "security" requiring registration under the Securities Act of 1933 and that the Staff concluded that there should be a further meeting on Friday, September 29th, for the purpose of determining what modifications, if any, were necessary in the present procedures of Capital Counsellors for arranging purchases of U.S. Government securities.

As I believe Mr. Weiss explained to you, the Capital Counsellors Government Securities program involves in addition to the partners, two Delaware corporations controlled by Capital Counsellors: Capital Counsellors, Inc. ("Counsellors"), organized in 1959 and registered with the Commission as a Broker-Dealer (File No. 801-2426), and Capital Advisors, Inc. ("Advisors"), organized in 1960 and registered with the Commission as an Investment Advisor (File No. 2-16933).

The Government Securities program is designed for sophisticated and wealthy investors able to invest in multiples of \$10,000 to obtain margin loans at favorable rates for investing in U.S. Government securities. The ordinary brokers' margin loan

PLAINTIFF'S EXHIBIT 4

for the purchase of securities exceeds 7%. Investors in the Government Securities program are able to obtain this type of money at the best commercial rate, through the efforts of Capital Counsellors in obtaining commitments from banks and other financial institutions, secured by the Government securities purchased, on the basis of a promise of higher rates of return than those securities themselves produce. In addition to providing an attractive service for the well-informed investors, the Government Securities program also directly benefits the U.S. Government by sustaining a substantial demand, financed by large institutional investors, for Government securities.

The mechanics of the program are basically as follows:

(1) Capital Counsellors obtains a commitment from a non-bank lender such as a savings and loan association, in the form of letter enclosed herewith as "Exhibit A," to advance a certain sum of money to be deposited in a bank escrow account and to be used to purchase and sell U.S. Government securities as Capital Counsellors shall direct. Securities purchase are to be held for the account and further sums are to be deposited in the account by Capital Counsellors if the market value of the escrow securities falls below 90% of their purchase price. The lender agrees not to revoke its commitment or remove any securities for a period of two years, renewable for an additional year at Capital Counsellors' option. Capital Counsellors guarantees that the lender will be paid at the best commercial rate, currently from 6 to 6 1/2% per annum, well above the short-term Treasury bill yield.

(2) Capital Counsellors meanwhile obtains a number of commitments from private investors to purchase Government securities in multiples of \$100,000, putting up \$10,000 for each unit taken. This deposit is placed in a special account maintained by Capital Counsellors. The commitment letter, in the form of "Exhibit B" attached, provides that Counsellors assigns so much of its right, title and interest in the lender agreement (see (1) above) as covers the units taken. This effectively transfers to each investor the right to designate how and when U.S. Government securities placed in the bank escrow account are to be bought and sold. In addition, the investor takes over the duties of Capital Counsellors, which include the commitment to deposit in the escrow account from time to time sufficient money to make up the difference between the interest received on the U.S. Government securities purchased and the commitment to the lender to pay the agreed rate.

PLAINTIFF'S EXHIBIT 4

(3) Capital Counsellors then deposits in the bank escrow account from each investor's unit down payment such funds as are necessary for the purchase of U.S. Government securities, under an escrow agreement in the form of "Exhibit C" attached. The agreement provides that Capital Counsellors, as agent for the investors involved, will instruct the Bank how and when to purchase and sell Government securities.

(4) Advisors then suggests from time to time to each investor how he ought to purchase and sell the Government securities in his escrow account. The initial agreement with Capital Counsellors provides for a $1/8$ of 1% operating fee and a $1/2$ of 1% assignment fee, which cover the investment advisory services rendered by Advisors and services of Capital Counsellors in acting as depository and paying agent for the investors during the term of the agreements.

As a variation, a bank may act both as lender and custodian, operating under a simple note arrangement which is assigned by Capital Counsellors to the investor.

We respectfully submit that the above arrangements do not create a "security" within the sense of Section 2(1) of the Securities Act of 1933, or, even if any "security" is created, Capital Counsellors is engaged in a non-public offering exempt under Section 4(2) of that Act.

On the first point, we draw your attention to the fact that the investor ends up with the sole power to control the purchase and sale of the U.S. Government securities in the escrow account and thus the sole responsibility for management decision. The investor does not rely directly and completely on the efforts of third party for his profits, as in the "Tung Tree" and "Cattle Herd" situations. The investor is given two things and two things alone by the Government Securities program of Capital Counsellors: (1) the opportunity to obtain money for the purchase of U.S. Government securities at a more favorable rate than that generally available and (2) investment advisory services in deciding how and when to buy and sell those securities.

Perhaps it would better place the Government Securities program in focus to relate it to Atlantic Fund for Investment in United States Securities ("the Fund"), controlled by Capital Counsellors and registered with the Commission (File No. 2-16935). The Fund is invested in U.S. Government securities of exactly the same kind as those involved in the Government Securities program. The

PLAINTIFF'S EXHIBIT 4

only difference is that the investment management is handled by Advisors rather than left to the investor with the aid of Advisors. Each potential investor in the Capital Counsellors group of investment plans is asked whether he would like to manage his portfolio himself or have it managed by Capital Counsellors. Those who choose the latter course will invest in the Fund. Those who choose the former will invest in the Government Securities program. Thus, an investor's decision to put his money into the Government Securities program represents a deliberate reservation of management authority, which is foreign to the type of relationship normally embraced in the concept of a "security".

On the second point, Capital Counsellors has individually negotiated and contracted with approximately 55 investors to date, all well-to-do and sophisticated enough in money matters to realize the speculative risks, as well as the opportunities, which surround concentrated investment in the Government securities market. In other words, they meet the standards of S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953).

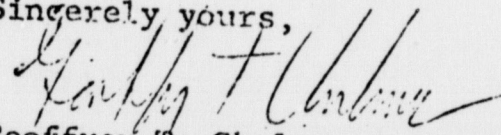
Moreover, Counsellors and Advisors are registered with the Commission and are subject to rules governing information distributed by broker-dealers and investment advisors and to the surveillance of Staff members on a regular basis.

We respectfully submit that the character of the Capital Counsellors Government Securities program and the number and type of investors intended to be attracted thereby are not suitable subjects for regulation by means of the registration requirements of the Securities Act of 1933, but more properly fall within the scope of broker-dealer and investment advisor activities, where surveillance is already assured.

On the basis of the foregoing, and in reliance on the opinion of this firm as counsel that registration is not necessary, we respectfully request that your Division indicate whether, or on what conditions, it will not recommend that the Commission take action if investors continue to be taken into the program without the filing of a Registration Statement under the 1933 Act.

As we understand that a further meeting is scheduled at your office on Friday morning, September 29th, to deal with the questions presented in the last meeting and this letter, we respectfully request a determination at that meeting as to what action we should take.

Sincerely yours,


Geoffrey T. Chalmers

GTC:F
Enclosures

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PLAINTIFF'S EXHIBIT 4

cc: Mr. J. Irving Weiss
Mr. Bertram Singer
Stanley Sporkin, Esq.
Ezra Weiss, Esq.
John O'Neill, Esq.



DIVISION OF
REGULATION AND FINANCE

PLAINTIFF'S EXHIBIT 5.
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20540

NOV 17 1967

Mr. Geoffrey T. Chalmers
Conboy, Hewitt, O'Brien & Boardman
20 Exchange Place
New York, New York 10005

Re: Capital Counsellors

Dear Mr. Chalmers:

This is in reference to your letter of October 31, 1967 in which you set forth the manner in which Capital Counsellors, Inc., a registered broker-dealer, and Capital Advisors, Inc., a registered investment advisor, will operate the Government Securities Program which was the subject of several conferences between you and members of the Commission's staff. On the basis of our latest discussion and your letter of October 31 I understand that the program will be operated as follows.

Capital Counsellors, Inc. would borrow from commercial banks, on a straight loan basis, up to \$100,000,000 in \$1,000,000 increments for two-year periods (renewable for a third year) at interest rates ranging from 6½% to 6¾% and would immediately purchase short-term government securities in its name and pledge those securities with the lending bank as security for the loan. It would then allocate the loan allotment, in \$100,000 increments, among customers previously solicited, receiving from each customer \$10,000 for each increment taken. Each customer would have the obligation to pay the bank loan rate on that portion allocated to him and would have the sole discretion, subject to the bank's right to call for more collateral, to buy and sell the securities pledged on that portion taken by him.

Capital Counsellors, Inc. would act as paying agent for its customers, putting down \$5,000 of the \$10,000 received for each \$100,000 increment as the required margin payment and holding the balance to pay, over a two-year period, the difference between the interest obtained on the short-term securities purchased and the interest rate on the bank loan. For this service Capital Counsellors, Inc. would charge a fee of ½ of 1% per annum of the amount of the bank's commitment to each customer.

Capital Advisors, Inc., the registered investment advisor, would agree with each customer to provide him with investment advice with respect to the U.S. Government Securities. For this service Capital Advisors, Inc. would receive a fee of ½ of 1% of the customer's aggregate investment, payable at the end of the two-year period.

PLAINTIFF'S EXHIBIT 5

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The sales literature that is to be used in connection with the Government Securities Program has been modified to remove references to Atlantic Fund and to make clear that the program does not involve the management of the customer's securities by Capital Advisors, Inc., Capital Counsellors, Inc. or by the partnership, Capital Counsellors. You have also advised that the necessary amendments to the Form ADV for Capital Advisors, Inc. are being made.

Although your letter of October 31, 1967 does not by its terms require any response unless the Division disagrees with your opinion that operation of the Government Securities Program as described would not involve the offer or sale of securities, I think it would be preferable if both your records and ours were to reflect the Division's position on this matter. Accordingly, I am advising you that no action will be recommended to the Commission if the Government Securities Program is operated on the basis described in your letter without registration under the Securities Act of 1933.

Sincerely yours,

George P. Michael, Jr.

George P. Michael, Jr.
Chief Counsel
Division of Corporation Finance

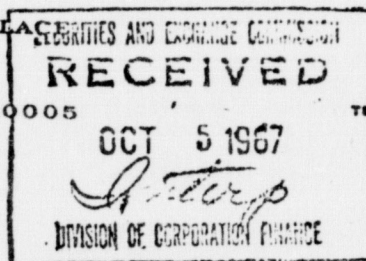
PLAINTIFF'S EXHIBIT 39.

CONDOX, HEWITT, O'BRIEN & BOARDMAN

T. TYNION
D. F. BUTLER
H. F. HARTUNG
T. L. BRINSMAN
S. J. NEVINS
J. MOUNTAIN, JR.
E. J. T. FLANAGAN
S. V. McMAHON
ANDER HOLTZMAN
M. J. O'CONNOR
E. P. KRAMER

20 EXCHANGE PLACE

NEW YORK, N. Y. 10005



TELEPHONE: DIBBY 4-3131

CABLE ADDRESS:
DIALBOARD, N. Y.

October 3, 1967

George B. Michaely, Jr., Esq.
Securities and Exchange Commission
500 North Capitol Street, N. W.
Washington, D. C. 20549



RECD-S.E.C.

OCT 5 - 1967

Re: Capital Counsellors

Dear Mr. Michaely:

It was a pleasure to meet with you and Messrs. Sporkin, Weiss and Robbins last Friday morning and have your views on the Securities Act problems relating to the U. S. Government Securities Program of Capital Counsellors.

You asked me to provide you with all material sent out by Capital Counsellors to the public relating to the Government Securities Program.

I understand from conversations with the Weiss brothers that the Government Securities Program was first conceived in January, 1967, and cleared with the Federal Home Loan Bank Board in February. A first mailing went out in the form of Exhibit A, on April 17 and 18 to 1,000 subscribers to the Money and Credit Reports put out by Capital Advisors, Inc. and to an additional 3,000 individuals who were ex-subscribers and people with similar interests in U. S. Government Securities. Between the end of April and mid-June approximately 500 persons, exclusively subscribers, replied to this initial mailing and they were sent a copy of the short memorandum attached as Exhibit B. On May 24 a further mailing of Exhibit B was made to the balance of the subscribers who had not replied to the April 17 and 18 mailing and, through June and July, 400 additional persons replied. Early in September, Exhibit A and Exhibit B were revised and incorporated in Exhibit C which was sent out to the 400 persons who had replied to the May 24 mailing. Capital Counsellors is preparing a new revision of the memorandum to answer further inquiries, in the form of Exhibit D.

PLAINTIFF'S EXHIBIT 39

George B. Michaely, Jr., Esq. -2-

October 3, 1967

As I mentioned to you, 55 individuals eventually became customers of Capital Counsellors under the Program. These people are all subscribers to Money and Credit Reports, with the exception of two individuals referred to Mr. Irving Weiss by a friend. In each case, the customer made a personal appointment with one of the Weiss brothers, talked the mechanics of the Program over, and signed an agreement.

With respect to the savings and loan side of the Program, a letter was sent to approximately 300 savings and loan institutions on about July 17 in the form of Exhibit E. Largely as the result of the liquidity problem with the Federal Home Loan Bank Board which we discussed last Friday, no significant response was made to this mailing. The one savings and loan institution now investing in this program was located for it by an independent finder.

Also, Capital Counsellors placed an advertisement in Barron's and the Wall Street Journal in mid-August in the form of Exhibit F. Approximately 40 responses were received from these advertisements, and those people responding to the advertisement received a reply in the form of Exhibit G. As you are no doubt aware, the Program has recently been concentrating on banks rather than savings and loan institutions.

The above documentation bears out my observation that the customers were offered an account controlled by them. For example, on page 5 of Exhibit A and Exhibit C the plans are represented as being designed "to help you manage your outright holdings of U. S. Government Securities". While at certain points, the documentation contains phrases which are not entirely consistent with the above statement, this is due more to inattention about phrasing than to impreciseness about the terms of the transaction itself.

As I made clear on Friday, it does not appear to me that Capital Counsellors is issuing a "security" subject to the normal registration requirements of the Securities Act of 1933. Apparently, you are of the view that the agreement between Capital Counsellors and the savings and loan institutions creates a "profit-sharing agreement" or "investment contract" which is something other than the U. S. Government securities placed in the escrow account pursuant thereto. Your view is that the agreement with the savings and loan institutions is like an ADR, a substitute security, having all the characteristics of the securities deposited plus an added feature (in this case, the guarantee of additional interest to the savings and loan institution) which makes it something different from the underlying Bills and Bonds.

PLAINTIFF'S EXHIBIT 39

George B. Michaely, Jr., Esq.

-3-

October 3, 1967

I am not about to argue that the savings and loan agreement is not a "security" within the strict definition contained in the Act, which is so all-embracing as to include savings accounts and "puts" and "calls", as well as equipment financing agreements and life insurance loan participations. However, I do argue that it would be as sensible to require registration of the latter two instruments as it would be to require the registration of the savings and loan agreements involved in the Government Securities program of Capital Counsellors, Inc. The three types of investment operate on the same financial level: they are non-transferrable, they are usually in amounts of \$1,000,000 or more and they are secured by underlying assets which can be sold in the event of default or speedy market decline.

You point out that savings and loan associations are in need of the detailed type of disclosure which only a prospectus can give and refer to the real estate participation financings which were placed into registration during the late 1950's. However, the real estate participations were being offered on an impersonal basis to uninformed investors in small amounts and there was no escrow arrangement involved, only a mortgage which contained cumbersome procedures for foreclosing on the security in the event of default. Here, the security is at all times in the escrow account and can be sold immediately on the open market in the event of default or failure to satisfy a margin call. Under these circumstances, it would seem that less care need be taken that the savings and loan association be provided with a prospectus type of disclosure, particularly since the savings and loan institutions are in a better position than the average investor to evaluate the financial soundness of Capital Counsellors.

With respect to "the back end of the deal", I think that we were in accord that the services rendered by Capital Counsellors in securing credit for the purchase of U. S. Government Securities by customers and the services rendered by Capital Advisors, Inc. in suggesting to customers how to manage their accounts did not add up to the type of activity generally regarded as separating management from ownership and creating a "security". A "security" is created when a customer turns over his money to Atlantic Fund for Investment in U. S. Government Securities, Inc. In that case, Advisors puts in the buy and sell orders and has overriding discretion as to how and when the underlying securities are to be sold. The Government Securities Program however, works like an ordinary broker's account. The customer puts in the buy and sell orders, accepting or disregarding the broker's advice. The only distinction between

PLAINTIFF'S EXHIBIT 39

George B. Michaely, Jr., Esq.

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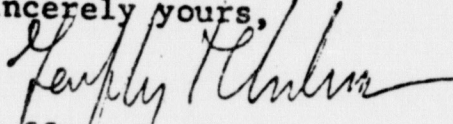
October 3, 1967

an ordinary broker's account and the Government Securities Program is that in the latter case, the securities involved are pledged with a bank for the account of a savings and loan institution, instead of pledged with a broker for the account of the bank putting up the money. In both cases, the broker goes out and arranges the credit for a group of his customers. In both cases, it is the customers who control the disposition of the pledged securities and who bear the ultimate responsibility for interest and principal payments.

It would be as sensible, in my view, to require the registration of customer accounts under the Program as it would be to require the registration of brokerage account agreements generally.

Again, thank you very much for giving us an opportunity to come down and express our views. We are of the opinion that the registration requirements of the Act would be so burdensome, if applied to our Program, as to force us to abandon it altogether. We would, of course, be glad to make such modifications in it as you may suggest for the purpose of providing any investor protection or reporting to the Commission that you feel to be lacking.

Sincerely yours,



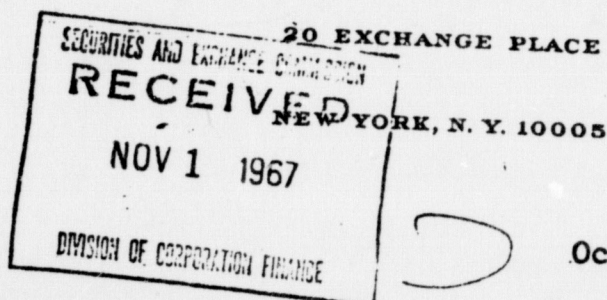
Geoffrey T. Chalmers

GTC:BKM
Encl.

cc: Bertram Singer
Stanley Sporkin, Esq.
Ezra Weiss, Esq.
Martin Robbins
David Heyman

PLAINTIFF'S EXHIBIT 40.
CONBOY, HEWITT, O'BRIEN & BOARDMAN

BIT
COURT
N. Y.



TELEPHONE: DIGBY 4-3131

CABLE ADDRESS:
DIALBOARD, N. Y.

October 31, 1967

George P. Michaely, Jr., Esq.
Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
500 North Capitol Street, N. W.
Washington, D. C. 20549

RECD-S.E.C.

NOV 1 - 1967

Re: Capital Counsellors

Dear Mr. Michaely:

It was a pleasure to be able to talk with you last Friday at some length about the operations of Capital Counsellors. It was particularly helpful to talk about the 1933 Act registration requirements applicable to the Government Securities Program of Capital Counsellors, on the basis of our September 20 and September 29 meetings and my letters to you dated September 25 and October 3.

As I explained to you on Friday, we are prepared to modify the Program so as to make clear that Capital Counsellors and its two affiliates are merely operating within the normal scope of broker and investment advisor activities. You on your part stated that if the Program were modified as I suggested, the Division of Corporation Finance would not be inclined to recommend that the registration requirements of the Securities Act of 1933 be imposed.

The proposed changes are as follows: Capital Counsellors, the partnership, would no longer perform any of its former functions. Capital Counsellors, Inc., the registered broker-dealer, would borrow from commercial banks, on a straight loan basis, up to \$100,000,000 in \$1,000,000 increments for two-year periods (renewable for a third year) at interest rates ranging from 6 1/4% to 6 1/2% and would immediately purchase short-term U.S. Government securities in its name and pledge them with the bank as security for the loan, as any broker normally does. The loan agreement would take the form of Exhibit A enclosed. Shortly after obtaining a \$1,000,000 allotment, Capital Counsellors would allocate it among customers

PLAINTIFF'S EXHIBIT 40

George P. Michalsky, Jr., Esq. -2- October 31, 1967

previously solicited, in \$100,000 increments, receiving from the customers \$10,000 for each increment taken. Each customer, as before, would have the obligation to pay the bank loan rate on that portion taken by him only, and would have the sole discretion (subject to the bank's right to call for more collateral) to buy and sell the securities pledged on that portion taken by him. The customer agreement would take the form of Exhibit B enclosed.

Capital Counsellors, Inc. would act as paying agent for its customers, putting down \$5,000 of the \$10,000 received for each \$100,000 as the required margin payment and holding the balance to pay 1% to 2 1/2% interest difference between the 4 - 5% on the short-term securities purchased and the 6 - 6 1/2% bank loan interest rate, over a two-year period. For this service, Capital Counsellors, Inc. would take 1/4 of 1% per annum on the amount of the bank's commitment to each customer.

Capital Advisors, Inc., the registered investment advisor, would agree at the same time to provide the customer with the necessary investment advice with respect to U.S. Government Securities. In particular, Advisors would alert the investor to the favorable condition for purchases in a depressed long-term U.S. Government Securities market when that favorable condition comes into existence. For these services, Advisors would receive 1/2 of 1% of the customer's aggregate investment, payable at the end of the two-year period.

You wanted the names of the banks who are presently lending under the Government Securities Program. They are: The American National Bank of St. Paul, Minn.; The Lake View Savings Bank and Trust Company, Chicago, Ill.; the Security National Bank, Chicago, Ill.; and the First National Bank of Baltimore, Md.

As you suggested, we are modifying our sales literature to remove all possible references to Atlantic Fund and to make clear that the Government Securities Program does not involve the management of the customer's securities. A revised sales memorandum in the form of Exhibit C is enclosed.

We are sending in an amendment to Form ADV for Advisors, setting forth the fee arrangements to be made as an amendment to Item 10(a). Otherwise, the registration of Advisors appears to be in order.

As we are under a good deal of pressure to straighten this thing out, I would like to assume that there is nothing in our revised Plan to which the Division would object and

PLAINTIFF'S EXHIBIT 40

George P. Michael, Jr., Esq. -3- October 31, 1967

that on Monday, November 6 we may proceed under it if we have not heard from you to the contrary.

Again, thank you for your assistance.

Yours sincerely,

Geoffrey T. Chalmers
Geoffrey T. Chalmers

GTC:BKM
Encl.

COMPANY	CAPITAL COUNSELLORS	DATE	10-31-67
LETTER FROM		LETTER	
SUBJECT	Conboy, Hewitt, O'Brien & Boardman (Geoffrey T. Chalmers) Re Proposed changes.	REC'D BY S.E.C.	11-1-67
ASSIGNED TO SECTION		REC'D BY SECTION	
TO BE ANSWERED BY	Mr. Michael	ANSWER SENT UP	
FOR SIGNATURE OF	Mr. MICHAEL	ANSWER MAILED	

SEC FORM 177

PLAINTIFF'S EXHIBIT 40

Due Date _____

Chicago, Ill., _____

19____

Amount \$1,410,000.00@63/8%

Two (2) Years-----

After date

Date	\$
Balance	
Balance	

We received the undersigned promises to pay to the order of

LAKE VIEW TRUST AND SAVINGS BANK, at its office,
CHICAGO, ILLINOIS

One Million Four Hundred Ten Thousand and 00/100-----

with interest @ 63/8%

Dollars

Interest at Seven per cent per annum after maturity until paid.

There has been deposited by the undersigned with said bank as collateral security for the payment of this note and of every other liability or liabilities, direct or contingent, now owing or which may hereafter be owing, whether now or hereafter contracted, of the undersigned (including all liabilities of any partnership created by such partnership while the undersigned, if an individual or individuals, may have been or may be a member or members thereof) to the said payee, or to the legal holders of this note, which collateral security the undersigned pledges to the Bank and grants to the Bank, the legal holder hereof, a security interest in the following property, viz.:

1.5MM U.S. Treasury Bills due 12-21-67

Right on the part of the said Bank or the legal holder hereof from time to time to call for additional security of such kind and value as will be satisfactory to said Bank or the legal holder hereof, and on failure to respond, or if in the judgment of said Bank, or the legal holder hereof, said security, or any part thereof or substitutes therefor or any part thereof, shall have depreciated in value, then the whole of this note shall be deemed immediately payable at the option of said Bank or the legal holder hereof, with full power in said Bank, or the legal holder hereof on maturity thereof, either by its terms or by election, to demand the payment of any of the other liabilities above mentioned, to at any time, and from time to time, sell, assign and deliver the whole or any part of said property and all additions thereto and substitutes therefor, or any part of said property, additions and substitutes, at any public or private sale, at the option of said Bank, or the legal holder hereof, and without advertising the same and without notice to the undersigned, and with the right of said Bank or the legal holder hereof, to be a purchaser at any public sale or sales; and in the event of any sale or purchase hereunder no matter by or to whom made, all notice shall be hereby expressly waived; and, after deducting all legal and other costs and expenses, including reasonable attorneys' fees, from the proceeds of such sale, if any, to the undersigned. Also, in any such event, the Bank shall have full power and authority at any time or times thereafter to exercise all or any of the remedies and shall have all the rights of a secured party under the Uniform Commercial Code of Illinois. Any requirement of the Code shall be met if such notice is mailed, postage prepaid, to the undersigned as shown on the records of the Bank at least 5 days prior to the date of the sale, disposition or other event or thing giving rise to the requirement of notice. Demand, presentment, protest and notice of dishonor are hereby waived, and may surrender, compromise, release, renew, extend or exchange all or any of the same. Said Bank or the legal holder hereof is hereby authorized and empowered at any time to apply to the payment of any liability or liabilities, whether the same be due or not, of the undersigned, to said Bank, or the legal holder hereof, (including all liabilities of any partnership created by such partnership while the undersigned, if an individual or individuals, may have been or may be a member or members thereof), whether the same be due or not, all property real and personal, of every kind and description, including credits, collections, moneys, drafts, checks, notes, bills or accounts (whether on hand or in transit) of the undersigned. To secure the payment of said note or any one or more of them in such court, in term time or vacation, after this instrument becomes due and confess judgment without process in favor of the legal holder of this note for such amount as may appear unpaid thereon, together with costs and reasonable attorneys' fees and to waive and release all errors and to become due hereunder, the undersigned, and each of them hereby authorizes irrevocably any attorney of any court of record to appear for the undersigned in any such proceeding and to consent to immediate execution upon such judgment, hereby ratifying and confirming all that said attorney may do by virtue hereof.

Broad Street, Room 630, New York, New York

Address

Capital Counsellors, Inc.

J. Irving Weiss

Telephone

PLAINTIFF'S EXHIBIT 40

FOR VALUE RECEIVED, we, the undersigned, do hereby jointly and severally guarantee the payment of the within note at maturity, in accordance with its terms, or if such maturity is extended, its maturity at any time thereafter, with interest at Seven Per Cent (7%) per annum from maturity until paid, and agree to pay all costs, expenses, and attorneys' fees paid or incurred in collecting the same from or in prosecuting any suit against any one or more of the makers, endorsers, or guarantors of said note, and the undersigned hereby consent that the securities for the said loan may be exchanged or surrendered from time to time, or the payment of any of the securities thereof extended from time to time, without notice to the undersigned, and the undersigned hereby waive any and all demand, notice, protest, and notice of protest.

It is expressly agreed that the extension of time of payment of this note shall not discharge any person secondarily liable, but that payment of said note may be extended from time to time until paid without affecting the liability of the undersigned, or any of them, thereon, and without notice to the undersigned, or any of them.

To secure the payment of said amount due or to become due hereunder, the undersigned, and each of them hereby authorizes irrevocably any attorney of any court of record to appear for the undersigned or any one or more of them in such court, in term time or vacation, after this instrument becomes due and confess judgment without process in favor of the legal holder of this note for such amount as may appear unpaid thereon, together with costs and reasonable attorneys' fees, and to waive and release all errors which may intervene in any such proceeding and to consent to immediate execution upon such judgment, hereby ratifying and confirming all that the said attorney may do by virtue hereof.

PLAINTIFF'S EXHIBIT 40

CAPITAL COUNSELLORS, II
50 BROAD STREET
NEW YORK 4, N.Y.

EXHIBIT B

WHITEHALL 4-1460

, 1967

Dear

This will confirm our agreement with respect to the purchase by you under our U. S. Government Securities Program of \$ face amount of U. S. Government Securities, \$ of which you will furnish on your execution of this agreement. \$ of which will be furnished by our assignment to you, effective on your execution of this agreement, of \$ of our \$ aggregate obligation under a loan agreement dated , 19 at % interest and due with 19 A copy of the loan agreement is enclosed herewith.

The securities in question are on deposit in our name with the assigned to you, and are subject to all the terms and conditions of the loan agreement, including the right of the bank to call for additional security and to sell the present security in satisfaction of the loan on the terms and conditions set forth in the agreement, to all of which you agree to be bound to the extent of your investment.

We agree to act as your agent for the purchase and sale of U. S. Government securities on your order from time to time, for the collection of sums due you and for the payment of interest and principal on your portion of the loan obligation when due and, pursuant thereto, you will deposit with us an additional \$ on the execution of this agreement to fulfil your obligations. For our services as agent, you agree to pay us an annual fee of 1/4 of 1% of the amount of your investment hereunder, per annum.

In addition, Capital Advisors, Inc. agrees to render you investment advisory services in connection with your investment hereunder at a fee of 1/2 of 1% of the aggregate value of your investment on , 19 , payable on that date. It is understood that neither Capital Counsellors, Inc. nor Capital Advisors, Inc. will have any discretionary power to purchase and sell the securities in your account without your prior authorization.

If this is in accord with our understanding, please sign and return the enclosed copy of this letter, together with your check for \$

Very truly yours,

CAPITAL COUNSELLORS, INC.

By _____
President

CAPITAL ADVISORS, INC.

By _____
President

AGREED AND ACCEPTED:

Date _____

PLAINTIFF'S EXHIBIT 40

KEEP THIS MEMORANDUM ...

It could easily become
your insurance policy...
to preserve your wealth...
and add to it.

M E M O R A N D U M

- ON -

UNITED STATES GOVERNMENT SECURITIES

- By -

J. Irving Weiss

This Memorandum Tells You:

1. How You Can Protect The Value Of

- (a) Your Business
- (b) Your Earnings
- (c) Your Investments

2. How To Make Your Capital Grow.

About Capital Counsellors, Inc.

J. Irving Weiss, president, with his brother, Abraham B. Weiss, has written several books on the changing structures and function of money from a practical and fresh point of view. After devoting many years in the study of money, he and his brother have become convinced that most businessmen, investors and even bankers have been taken up with daily business routine and have failed to take note of brand new conditions. They contend that to come out ahead in the immediate future, and for years to come, YOU MUST TAKE HEED of these new circumstances now surrounding your money -- else you may well find yourself "missing the boat".

They believe they can offer you great help. They manage and edit the widely read Money and Credit Reports issued twice a month. They have also established a United States Government Securities Division of Capital Counsellors, Inc., a registered broker-dealer controlled by them, and have a controlling interest in Capital Advisors Inc., a registered investment advisor which publishes Money and Credit Reports.

PLAINTIFF'S EXHIBIT 40

MAKING MONEY WITH
UNITED STATES GOVERNMENT SECURITIES

The prices of U. S. Government Securities have been fluctuating so widely in the postwar years as to make it possible for one to make or lose fortunes.

In truth despite all the intermediate fluctuations, Government Bonds have been undergoing a long bear market since 1946. We now find from our studies that this bear market does not have much further to go, and that investors, savers and businessmen will have a rare opportunity to obtain substantial capital gains.

The Number One Pitfall

In the long period that the bear market in Government Bonds has been under way, all attempts to halt the downturn and create a major rise resulted in failure.

Another premature attempt to create a boom is now being made in Washington, with the cooperation of some of the most powerful elements in banking. Of course this strong combination commands respect, but one must also be able to recognize the fact that there are powerful adjustment forces still at work that could easily cause this attempt to fail disastrously -- and could easily turn out to be the number one pitfall for many investors.

Our money managers in Washington, we believe, are now fighting against forces even more powerful than those that stymied their efforts in earlier years.

Important: While this all out effort is going on for easy money, our strategy is to ACT NOW. This calls for nailing down funds at reasonable rates of interest to be converted into capital gains when interest rates will be much higher, bond prices on the bargain counter and money extremely difficult to borrow.

In short it is our view that in this last phase of the decline it is most important to avoid the temptation of rushing in prematurely and, instead, to prepare the necessary strategy for successful capital gains at the right time.

This report briefly spells out:

- (1) How United States Government Securities can become your number one money making medium.
- (2) How they can act as a vehicle to provide you with protection against losses in your business and investments.
- (3) How we can provide the advice to help you
... TIME your purchases so as to maximize profits
and minimize losses.

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Let us first analyze the strengths and the weaknesses of this powerful combine of government and banking that is now attempting to create a boom in the bond market.

The Major Obstacle To Easy Money

In this attempt the Johnson Administration has won the cooperation of the Federal Reserve System and other banking elements in a drive to make money more available and easier -- primarily to counter the threat of a recession in business.

This of course is a worthy attempt, but the only hitch is that our political leaders, together with the Federal Reserve System, permitted the control over money and credit to pass into the hands of others:

One of the top functions of the Federal Reserve System has always been to prevent excesses. Yet, in the years between 1959 and 1966, it virtually stood powerless while a MASSIVE CREDIT INFLATION OF SOME 1/2 TRILLION DOLLARS swept the nation -- a figure unmatched in the annals of our history.

Here are the specific areas in which this credit inflation occurred:

Commercial Bank Loans	\$ 94 Billion
Mortgages of All Kinds	194 "
Corporate Debt	106 "
Trade Credit	109 "
Grand Total	\$503 "

Does it take any imagination to realize that -- once this huge amount of money and credit was issued -- the responsibility over this grand total shifted to those involved in the maze of transactions?

The chances are that the bulk of these transactions were conducted with good judgement and faith. What we want to call to your attention is:

1 - That most of these transactions took place while our economy was travelling at its fastest rate of growth.

2 - That imprudent judgements were inevitably made because this speed of growth was not sustainable.

3 - That in the process the Federal Reserve, other regulatory agencies in Washington and the States -- and our lawmakers as well -- lost control over money and credit to the thousands of bankers, businessmen and the millions of consumers involved in these transactions who now run the show. Their action or inaction is what really counts.

To be more specific, millions of consumers are just

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time, has been undercut and weakened -- and also puts into even more serious question his ability to keep interest rates down and bring on a premature bull market in bonds.

THE LAST PHASE OF THE DECLINE IN BONDS

There is a textbook theory about interest rates and business which goes something like this: When business is strong interest rates rise because money is needed by business. If business is weak, then interest rates decline because money is less needed by business.

The only fault with this reasoning is that it does not take into consideration the entirely new and different circumstances which can easily change the application of this overall truism.

There now exists a strange combination of forces which can be summed up as follows:

1. There is a big lack of genuine cash resources in the nation because we have more than used them up in the break-neck like speed of pushing growth.
2. In all previous periods of booms and expansion in this country, at least one or more major segments remained in good shape -- such as the business, banking, or governmental groups, while only one or two expanded.
3. During the last stretched out phase of the postwar boom, all of these groups expended at one and the same time, including the Federal Reserve System which practically doubled its credit expansion.
4. This leaves little in the way of support to cushion a setback.

Why The Last Phase Of The Bear Market
In Government Bonds Can Be Deep And Quick

There are a number of factors which can easily complicate the position of the bond market and bring on a steep and rapid decline in prices.

Among the most important is that Uncle Sam's revenues are intimately tied in with business volume and profits as a virtual partner in every business as well as a partner to the income and profits of individuals.

The greater the adjustment in business, the more must Uncle Sam borrow, since he will be unable to collect his share of tax receipts. It is well known that Washington has left itself with no reserves, as it pushed its budgets to the very extreme. These fresh borrowings must show up in the money markets, as well as in the long term capital bond markets. They inevitably will result in a further rise in interest rates.

May we remind you again that business is sadly

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lacking in cash reserves. Even our most conservative blue chip corporations have relied so heavily on daily increasing cash flows from good business that they neglected to build up reserves in cash. Inevitably they are going to need more money.

Just these two demand sources alone will become a heavy burden on any liquid cash that may be around. It can only result in much higher interest rates and conversely sharp and rapid declines in the prices for bonds of all kinds.

INSURING YOUR WEALTH AGAINST POSSIBLE LOSSES

It is quite obvious that the great majority of investors and businessmen have placed their faith in the ability of Uncle Sam to maneuver money and credit so as to (1) prevent a recession and (2) to bring a bull market in bonds.

We believe that the odds are heavily stacked against Uncle Sam in both cases this time. We believe that eventually success will come -- but not until a severe and quick adjustment has taken place.

It is mainly because of this severe adjustment that we believe one should take out a form of insurance against the possible serious losses that can accrue to your common stocks, your business, your income, your real estate and other holdings.

We have therefore prepared two major plans which relate only to United States Government Securities:

- 1 - To provide you with a new kind of built-in insurance policy which can help protect your wealth.
- 2 - To allow you to make a play for capital gains.
- 3 - To help you manage your outright holdings of U. S. Government Securities.

We will now spell out each one of these plans in detail.

PLAN #1

Let us assume you have real estate holdings, business interests, or own common stocks and bonds -- all of which can be adversely affected by generally unexpected developments in business, money and interest rates. To cushion any possible loss that you may face due to very tight money, declining prices and worsening business conditions, we can help you as follows:

- (1) To make a purchase commitment with us in United States Government Securities in units of either \$100,000 or \$1,000,000. Each unit to be covered by a minimum margin of 10%. In the case of a \$100,000 unit this would mean an outlay of \$10,000.

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Plan #1 (Cont.)

Only short term U. S. Treasury Bills will be purchased at this time, in preparation for capital gains investment in long term Government Bonds.

(2) We have arrangements with financial institutions to make the larger sums available at reasonable fixed rates of interest for the next two years. During that time you will guarantee them a fixed rate of interest that is higher than the current rate at which they can invest with safety.

(3) In anticipation of a rise in interest rates, you will continue to own only U. S. Treasury Bills. During that time we expect that long term Government Bonds will become depressed in price. It is our belief that these bonds will sell well below intrinsic value, giving you an opportunity to purchase them at low prices.

We will advise you when we believe it is time to switch to long term Government Bonds selling at lower prices.

(4) For every dollar you risk, we anticipate a potential capital gain of approximately \$3.00, after deducting interest charges. These interest charges are deductible from current income.

PLAN #2

You may purchase outright through us, your requirements of U. S. Government Securities, be they long term or short term, and we will advise you as to purchases and sales for a straight low cost fee of 1/4 of 1%, payable annually. We believe that we can earn this fee several times over from one year to the next, by helping you achieve a combination of safety of principal, higher income and capital gains. This plan applies to separate U. S. Government Security holdings you may own.

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October, 1967

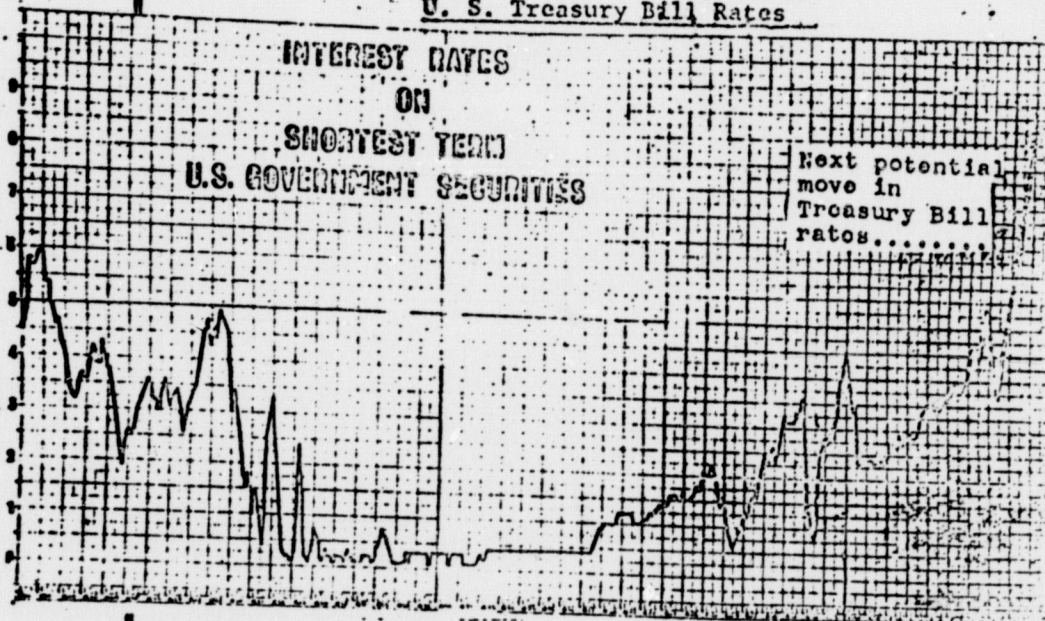
- 7 -

GRAPHIC PICTURE OF STRATEGY TO CONVERT
TAXABLE INCOME INTO CAPITAL GAINS
VIA U. S. GOVERNMENT SECURITIES

The First Phase: Buying U. S. Treasury Bills

Since we are first buying only Treasury Bills to avoid risk, we are paying a premium in interest rates between the return on Treasury Bills and what is guaranteed to the financial institution. But as interest rates rise for Treasury Bills we expect the carrying charge to narrow and even go over our interest cost.

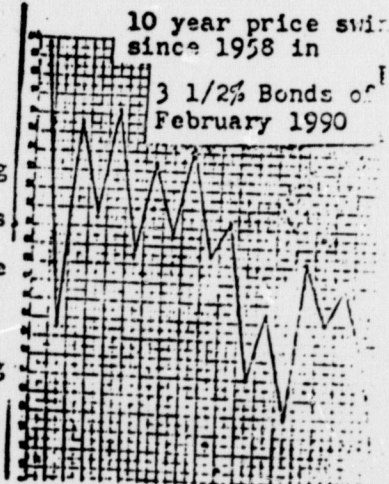
The Powerful Bull Market In
U. S. Treasury Bill Rates



The Second Phase: Buying
Government Bonds

In this second stage we expect that interest rates will reach their peak under very trying financial circumstances, permitting you to purchase long term Government Bonds at very low price levels.

At the right you see one example of what has been happening to the 3 1/2% bonds of Feb. 1990. The broken line is our estimate of the direction in which it is moving in terms of price.



Services of three (3) copies of

the within Cubulet is

hereby admitted this 4th day

of October, 1974

Ann Anglin
Attorney for U.S. Air

Services of three (3) copies of

the within _____ is

hereby admitted this _____ day

of _____, 197

Attorney for

